

Responses to questions raised during the Financial Support for Nephrology Practices during the COVID-19 Crisis Webinar

Author's Note: *These Questions and Answers are for information purposes only and not for providing legal advice. You should contact your attorney and/or tax advisor to obtain advice with respect to any particular issue or problem. The opinions expressed at or through these Questions and Answers are the opinions of the individual authors and may not reflect the opinions of the firm or any individual attorney.*

1. If salaries, whether of employed physicians or staff, are above \$100,000, can they be included up to \$100,000.

Yes, the salary/wages of employees (including self-employment income of partners in a partnership) can be included up to the ratable amount of \$100,000 per year (so up to \$8,333.33 per month). Cash payments such as salary/wages/self-employment income of partners/commissions/tips and sick and family leave pay are all subject to the \$100,000 cap, but state and local employment taxes, health insurance benefits/premiums and payments to 401(k) and other retirement plans are NOT subject to the \$100,000 cap.

2. If physicians are paid part as W-2 income and part as distributions of profit (e.g., in a Subchapter S corporation or LLC), can the profit portion be counted as compensation?

Self-employment income of a partner in a partnership can be included, but not profit distributions. There is an exception regarding profits for sole proprietors and individuals who file Schedule C to form 1040 for federal income tax purposes and are individual filers for a PPP loan – those individuals calculate loan amount based on net profits on the Schedule C and their forgiveness is capped at the equivalent 8 weeks of net profits from their 2019 Schedule C. However, such individuals should not be included as employees in a PPP loan application of a business concern.

3. Can we count expenses outside of the 8-week window toward our payroll relief fund?

We need further guidance from SBA and Treasury on this question, but it does not appear that any amount expended after the end of the 8-week covered period of the loan will be counted toward forgiveness, although there is a footnote in the FAQ that suggests that further guidance on forgiveness may update that.

4. Are the PPP forgiveness amounts taxable for federal purposes?

The CARES Act specifically provides that for purposes of the Internal Revenue Code, forgiven amounts be excluded from gross income. However, you will need to check with your local tax advisor whether state and local income tax authorities in your jurisdiction also grant this exception. You should also confer with your tax advisor whether the forgiven amount that constitute expenses can still be deducted since the forgiven amount may be treated by the IRS as tax exempt income.

5. Within the CARES Act Provider Relief Fund, are there definitions for health care related expenses or lost revenues that are attributable to coronavirus?

Congress stated in the CARES Act that the Public Health and Social Services Emergency Fund (“PHSSEF”) appropriations was available “for building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equipment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity.” HHS has neither defined nor provided further examples of “health care related expenses or lost revenues that are attributable to coronavirus.” Without further guidance, it appears HHS intends for providers to have flexibility in the meaning of these terms. I.e., for projects/activities beyond those specifically enumerated in the CARES Act.

6. For the CARES Act Provider Relief Fund, how do we “document” lost revenues?

HHS has not provided guidance on documenting lost revenue. HHS may provide further guidance before the close of the attestation period or before the first quarterly report is due.

Without guidance, practically, we encourage providers to document lost revenue in multiple ways. Providers could show their average revenue rate at this time of year compared to income during the COVID-19 pandemic. Providers could show that their number of office visits have declined, or that they were unable to collect copayments or insurance reimbursement due to patients’ losing their jobs/insurance. Providers will also separately want to record increased costs to add telehealth services, additional PPE supplies, or hazard pay. Your specific situation may vary, but providers should document how COVID-19 affected their practice prior to receipt of further HHS guidance in multiple ways.

We anticipate that recordkeeping/reports will only be necessary until the recipient spends the Provider Relief Funds in full.

7. Is the CARES Act Provider Relief Fund payments taxable for federal purposes?

Congress did not expressly exempt the PHSSEF appropriations from federal taxation. As such, the default rule that these funds are taxable likely applies.

8. If you do not want the CARES Provider Relief Fund payments and do not want to submit the Attestation, what do you do?

A provider that does not want to accept the CARES Act Provider Relief Fund should visit the [CARES Act Provider Relief Fund Payment Attestation Portal](#), which will guide providers through the attestation process to accept or reject the funds. If the provider rejects the funds, the Portal should provide the provider instructions to return the funds.

9. Can you explain the scope of the prohibition on balance billing—is it for all patients? Medicare patients? Just COVID-19 patients?

HHS updated its Terms and Conditions of the CARES Act Provider Relief Fund on Tuesday, April 21 to clarify the scope of the balance billing prohibition. Essentially, the Terms and Conditions now apply the balance billing prohibition “for all care for a *presumptive* or actual case of COVID-19.” This previously read “possible or actual,” which HHS’ eligibility guidance suggested could be all patients. The language is not limited to specific payors.